

The Odisha Gazette



EXTRAORDINARY
PUBLISHED BY AUTHORITY

No. 1136 CUTTACK, WEDNESDAY, JUNE 6, 2012/JAISTHA 16, 1934

LABOUR & E. S. I. DEPARTMENT

NOTIFICATION

The 25th May 2012

No. 4186—IR (ID)-135/2011-LESI.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 8th May 2012 in Industrial Dispute Case No. 04/2011 of the Presiding Officer, Industrial Tribunal, Bhubaneswar to whom the industrial dispute between the Management of M/s. Chemflo Industries (India) Pvt. Ltd., S-3/49, Mancheswar Industrial Estate, Bhubaneswar and its Workman Shri Sahadev Pandab was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

INDUSTRIAL TRIBUNAL, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 04 OF 2011

Dated the 8th May 2012

Present :

Shri Raghbir Dash, O. S. J. S. (Sr. Branch),
Presiding Officer, Industrial Tribunal,
Bhubaneswar.

Between :

The Management of .. First-party Management
M/s. Chemflo Industries (India) Pvt. Ltd.,
S-3/49, Mancheswar Industrial Estate,
Bhubaneswar.

And

Shri Sahadev Pandab, Plot No. 4775, .. Second-party Workman
At Chakeisihani,
Post Rasulgarh, Bhubaneswar-751 010

Appearances :

<u>Shri Subrata Kumar Mishra, Advocate</u>	.. For the First-party Management
Shri B. C. Bastia and Associates	.. For the Second-party Workman Advocate.

AWARD

The Government of Odisha in the Labour & Employment Department (Presently, the Labour and E. S. I. Department) in exercise of the powers conferred upon them by sub-section (5) of Section 12, read with Clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (for short the Act) have referred the following dispute for adjudication vide their Order No. 1137-ID-135/2010-L.E., dated the 29th January 2011.

"Whether the action of the management of M/s. Chemflo Industries (India) Pvt. Ltd., in terminating the services of Shri Sahadev Pandab with effect from the 4th October 2008, exSales Executive is legal and/or justified ? If not, what relief Shri Pandab is entitled to ?"

2. The case of the second-party as narrated in the claim statement, in brief, is that he had been working as a Sales Executive in the establishment of the first-party since August 2003 with a monthly salary of Rs. 5,000 which should revised and on the last date of his work he used to get a salary of Rs. 5,550 per month. The principal work he used to perform was clerical in nature. He used to collect sale proceeds from different parties to deposit in the first-party's Bank Account. On the 30th July 2008 while performing his duties he met with a vehicular accident and remained under medical treatment for a period of about two months. But, after his discharge when he resumed duties on the 4th October 2008 the management refused employment to him. Neither any disciplinary action was initiated against him nor was he served with any notice under Section 25-F of the Act. The termination of service being illegal and unjustified, he is entitled to be reinstated with back wages.

3. In its written statement the first-party has contended that there does not exist employer-employee relationship between the parties. The second-party was never appointed as an employee. He was engaged by the first-party on commission basis to collect credit from different dealers. As such, he was not working under the control and supervision of the first-party, nor any salary or wages used to be paid to him. As such, the second-party is not entitled to any relief.

4. The following three issues have been settled :—

ISSUES

- (i) "Whether the action of the management of M/s. Chemflo Industries (India) Pvt. Ltd., in terminating the services of Shri Sahadev Pandab with effect from the 4th October 2008, exSales Executive is legal and/or justified ?
- (ii) If not, what relief Shri Pandab is entitled to ?
- (iii) Whether there exists employer-employee relationship between the parties ?"

5. The second-party has examined himself as W. W. No. 1. The first-party has examined its Director as M. W. No. 1. On behalf of the second-party documents have been marked from Exts. 1 to 5. No document has been marked from the other side.

FINDINGS

6. *Issue No. (iii)*—M. W. No. 1 has stated that the second-party was engaged by the management on commission basis for collection of credit from the Dealers of the first-party. He has further stated that the second-party never worked under the control and supervision of the first-party. He had no fixed schedule time for performing his duties. He was not required to put signature on any Attendance Register. He was not getting wages from the management. He was never a member of the Provident Fund and E. S. I. W. W. No. 1, on the other hand, has deposed that he was employed by the first-party with monthly salary of Rs. 5,000 which was subsequently revised and as on the last date of his work he was getting Rs. 5,550 per month. Though he was designated as Sales Executive he was mostly doing the duties of a Clerk. He used to maintain Registers and Records. He also used to collect sale proceeds from different parties to deposit the same in the management's Bank Account.

7. Admittedly, no order of appointment is in existence, nor any agreement was signed between the parties containing the terms and conditions of engagement of the second-party either on commission basis or as an employee. However, in order to prove that he was working as a Sales Executive and was getting monthly emoluments the second-party has exhibited two salary certificates marked Exts. 1 and 1/1. It is not in dispute that the salary certificates have been issued by the first-party. Ext. 1 issued on the 19th July 2004 reflects that the second-party, who was working in the first-party's establishment as a Sales Executive, used to get monthly emoluments of Rs. 5,000 (all inclusive). Ext. 1/1 which is issued on the 10th January 2006 reflects that the monthly emoluments of the second-party was subsequently revised to Rs. 5,250 (all inclusive). M. W. No. 1 admits to have issued these salary certificates. But, the management has put a suggestion to W. W. No. 1 that the salary certificates were issued on the request of the second-party only to facilitate him to get bank loan. Reiterating the same plea it is argued by the first-party that the second-party cannot take any advantage on the strength of these certificates by claiming that he was a workman under the management. It is the Director himself who has issued the salary certificates—one in July 2004 and the other in January, 2006. In both the certificates the second-party is described as a Sales Executive working under the first-party on getting monthly emoluments. The mere plea that the certificates were issued at the instance of the second-party only to facilitate him to get bank loan is not sufficient to wipeout the facts admitted by the first-party while issuing the certificates. M. W. No. 1 has failed to explain as to why he did not exhibit any document showing commission being paid to the second-party from time to time. The management has failed to prove any document to support its stand that the second-party was engaged on commission basis. The salary certificates support the second-party's case that he was working as a Sales Executive receiving monthly emoluments.

No doubt, the second-party admits that he was not receiving salary by putting signature on the Salary Register, that he was not putting his signature on any Attendance Register and that there used to be no deduction from his salary towards E. S. I. and E. P. F. But, all these are not going to disprove the employer-employee relationship which is otherwise established by the evidence adduced by the second-party. Taking all the facts and circumstances into consideration, the issue is answered in the affirmative.